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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/865,249	05/25/2001	Steve J. Mastrianni	YOR920010276US1	3967

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EXAMINER	
TIV, BACKHEAN	
ART UNIT	**PAPER NUMBER**
2151	

DATE MAILED: 10/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/865,249	MASTRIANNI ET AL.	
	Examiner	Art Unit	
	Backhean Tiv	2151	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *8/4/04/*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-50* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-50* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *3/04,5/04,8/,04*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Detailed Action

Claims 1-50 are pending in this application.

Specification

The cross-reference to related applications Serial No. are missing, the applicant is required to provide application Serial No. and their updating status in the response to this Office Action.

Information Disclosure Statement

The IDS filed on 3/11/04,5/10/04, 8/4/04, have been considered.

NonStatutory provisional Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 8,9, 10,14,19,26,27,28,35,42,43,44,48 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of US Patent Application 09/866,251 in view of US Patent 6,714,952 issued to Dunham et al.(Dunham). This is a *provisional* double patenting rejection since the conflicting claims have not in fact been patented. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following reasons:

Claim 1 of US Patent Application 09/866,251 teaches all the limitations of claims 8,9,10,14,19,26,27,28,35,42,43,44,48 except for:

initiating copying of the files from the source data processing system to the destination data processing system using the result.

However, Dunham teaches initiating copying of the files from the source data processing system to the destination data processing system using the result(col.2, lines 48-54, col.8, lines 1-6).

Therefore it would have been obvious to one ordinary skill in the art to modify the method of US Patent Application 09/866,251 to add initiating copying of the files from the source data processing system to the destination data processing system using the result as taught by Dunham in order to back-up files(Dunham, col.1, lines 12-13).

One skilled in the art would have been motivated to combine US Patent Number 09/866,251 and Dunham in order to provide a method to utilize file system attributes in a multi-lingual file system environment(Dunham, col.1, lines 10-13).

Claims 17,18 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 17 of US Patent Application 09/866,251 in view of US Patent 6,714,952 issued to Dunham et al.(Dunham). This is a *provisional* double patenting rejection since the conflicting claims have not in fact been patented. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following reasons:

Claim 17 of US Patent Application 09/866,251 teaches all the limitations of claims 1 except for:

initiate copying of the files from the source data processing system to the destination data processing system using the result.

However, Dunham teaches initiate copying of the files from the source data processing system to the destination data processing system using the result (col.2, lines 48-54, col.8, lines 1-6).

Therefore it would have been obvious to one ordinary skill in the art to modify the method of US Patent Application 09/866,251 to add initiate copying of the files from the source data processing system to the destination data processing system using the result as taught by Dunham in order to back-up files(Dunham, col.1, lines 12-13).

One skilled in the art would have been motivated to combine US Patent Number 09/866,251 and Dunham in order to provide a method to utilize file system attributes in a multi-lingual file system environment(Dunham, col.1, lines 10-13).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-6,8-24,26-40,42-50 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent 6,714,952 issued to Dunham et al.(Dunham).

As per claim 1, a method in a data processing system for migrating an application from a source data processing system to a destination data processing system(col.2, lines 55-64), the method comprising:

querying a data store containing meta data regarding files associated with the application(col.2, lines 39-43, col.3, lines 7-17, col.5, lines 63-67), wherein the data store includes meta data describing the files accessed by the application(col.5, lines 21-25, col.6, lines 50-56, col.7, lines 11-15, Fig.1-2);

receiving a result in response to querying the data store(col.7, lines 39-49, lines 58-60); and initiating copying of the files from the source data processing system to the destination data processing system using the result(col.2, lines 48-51, col.8, lines 1-3).

As per claim 2, the method of claim 1 further comprising: receiving a request to move files associated with the application from the source data processing system to the destination data processing system, wherein querying of the data store occurs in response to receiving the request(col.2, lines 39-43).

As per claim 3, the method of claim 1, wherein the data store is one of a file or a database(col.2, line 50).

As per claim 4, the method of claim 1, wherein the result is a list of file names and file locations(col.4,lines 36-51).

As per claim 5, the method of claim 1, wherein the data store is located in the source data processing system(col.2, lines 55-64).

As per claim 6, the method of claim 1, wherein the source data processing system records, in the data store, all files accessed by the application while the application was on the source data processing system(col.5, lines 47-55).

As per claim 12, the method of claim 8, wherein the initiating step comprises: initiating copying of the files from a source data processing system to the data processing system using the result(Fig.1).

As per claim 15, the method of claim 14, wherein the association includes a file name for the file and a program name for the program(col.4, lines 20-34; it is inherent to have a file name for a file and a program name for a program in order to know which file or program to back-up).

As per claim 16, the method of claim 14, wherein the association further includes at least one of a location of the file, a time of file access, a date of file access, an extension for the file, and an identification of a user of the program(col.2,lines 21-22).

As per claim 17, a data processing system comprising:
a bus system(col.1, line 16; it is inherent that's there is a bus system because all computers have a bus system in order for it to operate);
a communications unit connected to the bus system(Fig.1; it is inherent that the bus system and the communication unit are connected to each other in order for the computer to communicate with other network devices);
a memory connected to the bus system, wherein the memory includes as set of instructions(col.8, lines 8-10; it is inherent that memory is connected to the bus system and includes instructions because without the bus system and memory with instructions

the computer would not operate). All other limitations of claim 17 are rejected based on the same rationale as claim 1(see above).

Claims 8,9,10,14,19,26,27,28,32,35,42,43,44,48 are rejected based on the same rationale as claim 1 (see above).

Claims 20,36, are rejected based on the same rationale as claim 2(see above).

Claims 21,37 are rejected based on the same rationale as claim 3(see above).

Claims 13,22,31,38,47 are rejected based on the same rationale as claim 4 (see above).

Claims 11,23,29,39,45 are rejected based on the same rationale as claim 5 (see above).

Claims 24,40 are rejected based on the same rationale as claim 6(see above).

Claims 30,46 are rejected based on the same rationale as 12 (see above).

Claims 33,49 are rejected based on the same rationale as claim 15(see above).

Claims 34,50 are rejected based on the same rationale as claim 16 (see above).

Claim 18 is rejected based on the same rationale as claim 17(see above).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 7, 25,41 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,714,952 issued to Dunham et al.(Dunham) in view of Office Notice.

Dunham teaches all the limitations of claim 1,19,35.

However, Dunham does not teaches as per claim 7, the method of claim 1, wherein the application is one of a word processor, a spreadsheet program, an email program, or a browser.

Office Notice is taken; it is obvious to one ordinary skill in the art to modify the method of Dunham to add wherein the application is one of a word processor, a spreadsheet program, an email program, or a browser in order back-up different types of data for later use.

Claims 25, 41 are rejected based on the same rationale as claim 7 (see above).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Backhean Tiv whose telephone number is (571)272-3941. The examiner can normally be reached on 9 A.M.-12 P.M. and 1 -6 P.M. Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on (571) 272-3939. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Backhean Tiv
2151
9/29/04

ZARNI MAUNG
PRIMARY EXAMINER